carried in the lorry by reason of his contract of employment within the meaning of those words in Exception (iii). Still less, in their Lordships' view, can the fact that the lorry driver gave him a lift because he thought that, by reason of the forester's employment, it might be good for business to do so.

Their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Philip Conway Thomas & Co.; Coward Chance.*

NOTE TO RAMASAMY v. RAMASAMY

Choor Singh J. in *Ramasamy* v. *Ramasamy* (see next column) granted a decree nisi to be made absolute in three months to the petitioner.

The respondent appealed, *inter alia*, on the ground that: —

"4 (i) The learned judge erred in law in directing the respondent that the only evidence that would be relevant in divorce proceedings based on section 82(1)(e) would be evidence that would show the parties were not living apart and that having regard to the evidence given by the petitioner all other evidence is irrelevant.

(ii) The learned judge erred in law in directing the respondent that cross-examination would be relevant only if it went towards proving that the parties were not living apart and that having regard to the evidence given by the petitioner the evidence of the respondent would not alter matters, resulting in the respondent not giving any evidence."

Counsel for the petitioner (respondent in the appeal) submitted that the mere fact that the parties have lived separately was sufficient. He argued that the question of fault was irrelevant and that the proviso to section 82 of the Women's Charter did not apply to petitions based on the ground of seven years' separation. The Court of Appeal (Civil Appeal No. 67 of 1977, Wee Chong Jin C.J., Kulasekaram and D'Cotta JJ., February 22, 1978) allowed the appeal and ordered a re-trial before another judge.

The question whether "no question of fault on the part of the petitioner enters into the picture at all when the petition is based on the ground of seven years' separation" may now not be free from doubt, notwithstanding the cases of *Joseph Wong Phui Lun* v. *Yeoh Loon Goit alias Yoa Hsiao Yu* (Divorce Petitioner No. 36 of 1976) and *Moses* v. *Moses* [1968] 1 M.L.J. 96.

See also *The Straits Times*, February 23, 1978. See also *Supreme Court Practice*, 1976, 59/11/4.

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RAMASAMY v. RAMASAMY

[O.C.J. (Choor Singh J.) November 17, 1977]

[Singapore — Divorce Petition No. 154 of 1976]

Family Law — Divorce — Spouse having lived separately for period of not less than 7 years — No likelihood of reconciliation — Respondent praying for judicial separation — Women's Charter (Cap. 47), s. 82(1)(e).

The petitioner presented a petition for divorce praying that his marriage might be dissolved under section 82(1)(e) of the Women's Charter on the ground that his wife had lived separately from him for a period of not less than seven years immediately preceding the presentation of the petition and was unlikely to be reconciled with him. The respondent prayed for a judicial separation.

Held: (1) when a petition is presented under section 82(1)(e) of the Women's Charter, all that the petitioner need prove is:— (a) that he and his wife have been living apart for not less than seven years immediately preceding the presentation of the petition; and (b) that he and his wife are unlikely to be reconciled. In this case on the evidence tendered by the petitioner the court was satisfied that he had proved both these matters;

(2) where a marriage bond had become no more than a detested shackle after the parties have been separated for not less than seven years, it was in the public interest that the tie should be severed. It was sufficient if the marriage was a detested shackle in the eyes of *either* party and it was not necessary that it should be so in the eyes of *both* parties to the marriage. When a petition was presented on the ground of seven years' separation, the fact that the respondent wished to continue with the marriage could never be a valid ground for disallowing the petition;

(3) in this case no useful purpose would be served by granting a decree of judicial separation. Furthermore, the petitioner having proved his case under section 82(1)(e) of the Women's Charter, he had a statutory right to have his marriage dissolved.

Case referred to:-

(1) *Moses* v. *Moses* [1968] 1 M.L.J. 96.

DIVORCE PETITION.

J.B. Jeyaretnam for the petitioner.

K.S. Rajah (Acting Director of Legal Aid) (*Sia Suat Hwa* with him) for the respondent.

Choor Singh J.: The petitioner presented a petition for divorce to the court praying that his marriage may be dissolved under section 82(1)(e) of the Women's Charter on the ground that his wife had lived separately from him for a period of not less than seven years immediately preceding the presentation of the petition and was unlikely to be reconciled with him.

In my judgment, when a petition is presented under section 82(1)(e) of the Women's Charter, all that the petitioner need prove is: —

(1) that he and his wife have been living apart for not less than seven years immediately preceding the presentation of the petition; and

(2) that he and his wife are unlikely to be reconciled.

On the evidence tendered by the petitioner I was satisfied that he had proved both these matters.

The petitioner admitted that during the marriage he had been guilty of adultery. He filed a statement disclosing particulars of the adultery. I considered this statement and in the light of all the facts of this case, decided to exercise my discretion in favour of the petitioner and granted him a divorce notwithstanding his adultery.

Counsel for the respondent endeavoured to resist the petition on a number of grounds:

(i) that a divorce would result in financial and other hardship to the respondent;

(ii) a divorce would cause serious repercussions to the respondent's social status in the Indian community;

(iii) a divorce was an anathema to the respondent on religious and moral grounds;

(iv) that the seven years' separation was planned and imposed upon the respondent by the petitioner;

(v) that the general conduct of the petitioner towards the respondent did not warrant the granting of a divorce to the petitioner; and

(vi) that if a divorce was granted the respondent would not be entitled to a share in the estate of the petitioner upon his death.

In my opinion counsel for the respondent had completely misapprehended the law applicable. All these matters were irrelevant having regard to the ground on which the petition was based.

I agree with my brother Winslow J. in *Moses* v. *Moses*,[1] that "no question of fault on the part of the petitioner enters into the picture at all" when the petition is based on the ground of "seven years' separation" and that the amendments contained in section 82(1)(e) and section 82(2)(g) of the Women's Charter "are designed to put an end to marriages where the parties have been separated for at least seven years and are unlikely to be reconciled. In short, the amendments appear to have been made on the basis that, where the marriage bond has become no more than a detested shackle after the parties have been separated for not less than seven years, it is in the public interest that the tie should be severed.". I would add that it is sufficient if the marriage is a detested shackle in the eyes of either party and that it is not necessary that it should be so in the eyes of both parties to the marriage. When a petition is presented on the ground of seven years' separation, the fact that the respondent wishes to continue with the marriage can never be a valid ground for disallowing the petition. In such cases our Parliament has in clear and unmistakable language given the court powers to dissolve the marriage when the petitioner has satisfied the court on the two relevant matters and it is unnecessary to look at the law in New Zealand or elsewhere for guidance. In my judgment the provisions of section 82(1)(e) and 82(2)(g) of the Women's Charter were correctly construed by Winslow J. in *Moses* v. *Moses, supra,* which decision is almost ten years old now and has been applied in hundreds of cases resulting in the dissolution of hundreds of marriages in Singapore. It is too late now to construe these provisions in any other manner.

The respondent prayed for a judicial separation. Here, it is necessary to bear in mind the history of this marriage. In Divorce No. 35 of 1970 the petitioner had sought a divorce from the respondent on the ground of cruelty. That petition was heard by me and in that case I heard all the allegations and counter-allegations of the parties to the marriage right from the start of the marriage. That petition was dismissed by me after a very lengthy hearing and the petitioner's appeal against my judgment was dismissed by the Court of Appeal in Civil Appeal No. 8 of 1971. I am therefore very familiar with the whole history of this marriage. I am aware of what each party has done to the other or is endeavouring to do to the other party. Even in these proceedings there were allegations and counter-allegations. For example, the respondent alleged that the petitioner had frequently committed adultery with one Miss Soh Jin Choo a member of his office staff. The petitioner, on the other hand, alleged that the respondent had in October 1976 committed adultery with a man whose identity was not known to him. In view of the ground on which the petition was based I did not consider it necessary to go into these allegations. The parties were clearly at logger-heads. There was no love or affection left between them. The petitioner had during the last ten years tried every means of getting rid of the respondent. And the respondent had tried every means of harrassing the petitioner and members of his office staff. Under these circumstances, I was of the opinion that no useful purpose would be served by granting a decree of judicial separation. Furthermore, the petitioner having proved his case under section 82(1)(e) of the Women's Charter, he had a statutory right to have his marriage dissolved.

It was for these reasons that I rejected the respondent's plea for a judicial separation and granted the petitioner's prayer for the dissolution of his marriage.

Petition granted.

Solicitors: *J.B. Jeyaretnam & Co.; Director of Legal Aid.*

NG WEE WHYE v. WONG SOOK HENG

[O.C.J. (Rajah J.) November 17, 1977]
[Singapore — Divorce No. 255 of 1977]

Family Law — Marriage — Refusal to consummate — Parties living apart — Husband in Singapore while wife in Penang — Petition for marriage to be declared null and void — Jurisdiction — Women's Charter (Cap. 47), s. 80.

This was a petition by the husband that his marriage to his wife be declared null and void. The petitioner was married under the provisions of the Women's Charter in Singapore on July 14, 1975 to the respondent, a Malaysian citizen, who prior to her marriage had been residing in Penang. After the said marriage the respondent stayed with the petitioner and his family for a period of two weeks, after which she left Singapore to return to Penang — since then the petitioner and the respondent had been living apart from each other, he in Singapore and she in Penang. It was alleged that the respondent had wilfully refused to consummate the marriage. There was evidence at or about the time of the said marriage the parties had agreed that they should not cohabit until they had gone through a Chinese customary marriage to be held a year after the said marriage.